IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13-08-2007

CORAM :

THE HONOURABLE MR.JUSTICE A. KULASEKARAN

W.P. No. 22290 of 2004

M/s. Nallathambi Resorts (P) Ltd
rep. By its Chairman and Managing
Director R.N. Nallathambi
Valavandi Nadu
Semmedu Post, Kolli Hills
Namakkal Taluk
Namakkal District .. Petitioner

Versus

1. Government of Tamil Nadu
rep. By its Secretary
Information & Tourism Department
Fort St. George
Chennai - 600 009

2. The Commissioner of Tourism
Tourism Complex
Wallajah Road
Chennai - 600 002 .. Respondents

Petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus as stated therein.

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For Petitioner : Mr. K.V. Sundararajan

For Respondents : Mr. S. Gopinathan
Addl. Government Pleader

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ORDER

The petitioner has come forward with this writ petition praying for a writ of Certiorarified Mandamus by calling for the records of the letter No.7339/Su3/2003-10, dated 17.06.2004 passed by the first respondent and quash the same and direct the respondents to grant subsidy as per G.O. Ms. No.14 dated 20.01.1992 along with interest.

2. The petitioner is a company incorporated under the Companies Act, which stated to have invested a sum of Rs.47.46 lakhs for starting a hotel resorts. The petitioner company has applied for planning permission with the local body, the same was considered and planning permission was also granted on 23.03.1990, but the petitioner could not commence the construction in time, hence, sought for renewal and the same was also considered by the local authorities and renewal was granted by order dated 07.03.1992. In the meanwhile, the first respondent has issued G.O. Ms. No.306, Industries, (MIG.2) Department dated 22.05.1989 wherein it is stated that in view of the important role played by tourism in improving the socio-economic conditions of the society "Tourism" has been declared as an "industry" in Tamil Nadu and that the Government appointed a committee to examine and recommend to the Government tourism project schemes and activities which can be recommended for the various incentives, concessions and subsidies, thereafter, the committee has submitted its report which was considered by the Government and the following projects were declared as Tourism Projects for the purpose of extending various concessions, incentives and subsidies as applicable to other industries:-

1) One Star, Two Star and Three Star hotels with investment less than Rs.100 lakhs to be set up in Tamil Nadu excluding the Corporation limits of Madras, Coimbatore and Madurai
2) Amusement Parks
3) Approved Tour Operators (for A.C. Coaches)
4) Golf Courses
5) Restaurants approved by Government of India/Government of Tamil Nadu"

3. Thereafter, in partial modification of the said GO Ms No.306 dated 22.05.1989, the Government issued G.O. Ms. No.14, Information and Tourism (Tourism VI) Department dated 20th January 1992 extending certain concessions, incentives and subsidies to the Tourism Projects which are mentioned below:-

"1. Loans will be given to Tourism projects at 14 per cent interest or as fixed by Government from time to time by Tamil Nadu Industrial Investment Corporation and SIPCOT.

2. Capital subsidy for new tourism projects at 10 per cent of total investment excluding cost of land, subject to a maximum of Rs.10 lakhs per project

3. Deferral Sales Tax for a period of 5 years on restaurant sales ineligible hotels and restaurants.

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4. Waiver of 50 percent luxury tax for a period of 5 years on rooms in respect of new hotel projects

5. Electricity tariff concession for new tourism projects on par with new industries

6. Capital subsidy at the rate of 15 percent for purchase of generators to be installed in new tourism projects, with a separate ceiling fo Rs.5.00 lakhs, which is exclusive of the ceiling of Rs.10 lakhs given as capital subsidy on the total investment in the project."

4. It is stated that the petitioner has submitted an application seeking capital and generator subsidy and on receipt of the same, the first respondent, by communication dated 26.11.2002 recommended to the second respondent for sanction of the said subsidy to the petitioner. In the meanwhile, the petitioner was directed by the respondents to furnish the details relating to commencement of their business and accordingly, by letter dated 08.09.2001, the petitioner sent the said details enclosing the certificates issued by the local body and other authorities to show that the petitioner has commenced the business only on 07.06.1993. Thereafter, the second respondent passed an order dated 09.12.2002 stating that the request for sanction of capital subsidy was examined in detail and found that capital subsidy cannot be sanctioned as per rules in force. Aggrieved by the said order dated 09.12.2002, the petitioner has filed an appeal before the first respondent on 18.12.2002. Pending the appeal, the first respondent also directed the second respondent to re-consider the request of the petitioner for sanctioning subsidy, but strangely, the first respondent, by the impugned order dated 17.06.2004 rejected the appeal on the ground that subsidy cannot be given with retrospective effect namely prior to G.O. Ms. No.14 dated 20.01.1992, hence, the present writ petition has been filed.

5. Mr. K.V. Sundarajan, learned counsel appearing for the petitioner submitted that the first respondent misconstrued the Government Order as well as the date of construction of the resort by the petitioner; that G.O. Ms. No.14 dated 20.01.1992 never says that an industry which commenced the construction process prior to the issuance of the said Government Order not entitled to the subsidy, however, in this case, the renewal of planning permission sought for by the petitioner was granted only on 07.03.1992 i.e., after the issuance of G.O. Ms. No.14 dated 20.01.1992, hence, the petitioner is entitled to the subsidy; that the first respondent itself has recommended to the second respondent to extend the subsidy to the petitioner even during the pendency of the appeal before it, which was not considered by the second respondent, while so, rejecting the appeal is untenable in law; that in any event, denying subsidy to the petitioner unit, which commenced the business on 07.06.1993 is contrary to the objects of G.O. Ms. No.14 dated 20.01.1992 and prayed for quashing of the impugned order.

6. On the above contention, this Court heard the learned Additional Government Pleader appearing for the respondents, who submitted that the petitioner has obtained planning permission from the local authority only on 23.03.1990, the said date is crucial to get the concession extended by the Government in G.O. Ms. No.14 dated 20.01.1992, hence, the impugned

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order was rightly passed by the first respondent and prayed for dismissal of the writ petition.

7. This Court carefully considered the argument of the counsel for both sides and perused the material records. The government has issued G.O. Ms No.14 dated 20.01.1992 thereby certain concessions, incentives and subsidies were extended to the tourism industry. Even prior to the said Government Order, G.O. Ms. No.306, Industries (MIG.2) Department dated 22.05.1989 was issued by the first respondent based on the report submitted by the committee and other agencies thereby the below mentioned concessions, incentives and subsidies as applicable to other industries were extended to the tourism projects, they area;-

1) One Star, Two Star and Three Star hotels with investment less than Rs.100 lakhs to be set up in Tamil Nadu excluding the Corporation limits of Madras, Coimbatore and Madurai
2) Amusement Parks
3) Approved Tour Operators (for A.C. Coaches)
4) Golf Courses
5) Restaurants approved by Government of India/Government of Tamil Nadu"

8. In partial modification of the above said G.O. Ms. No.306 dated 22.05.1989, the government has issued G.O. Ms. No.14, Information and Tourism (Tourism VI) Department dated 20.01.1992 whereby certain concessions were extended to the tourism projects which are mentioned supra. The petitioner, though obtained planning permission from the local body originally on 23.03.1990, could not commence the construction for several reasons, which are not relevant, however, he approached the local body again for renewal, which was granted on 07.03.1992. It is necessary to mention that the petitioner applied for renewal with the local body by their letter dated 18.01.1992 i.e., two days prior to issuance of G.O. Ms. No. 14 dated 20.01.1992, hence, it cannot be said that for the purpose of availing the benefits of the said Government Order, the petitioner approached the local body for renewal. The various certificates issued by the authorities which are enclosed in Page Nos. 15 to 19 of the typed set of papers disclose that the petitioner has commenced the business only on 07.06.1993. Indeed, the first respondent in his letter dated 26.11.2002 recommended to the second respondent to consider the request of the petitioner for granting subsidy but the same was not considered. While things are such, the second respondent has sent a communication dated 09.12.2002 informing that the petitioner's request was examined in detail and found that capital subsidy could not be sanctioned as per Rules in force. The said order was challenged by the petitioner by filing appeal before the first respondent. Pending appeal, the first respondent has sent a communication dated 14.01.2003 to the second respondent requesting to re-consider the claim of the petitioner for grant of subsidy. Thereafter, nothing transpired, however, the first respondent has passed the impugned order dated 17.06.2004 rejecting the appeal of the petitioner. It is seen from the impugned order that only one reason was assigned for rejecting the appeal namely, the petitioner has commenced the business prior to issuance of G.O. Ms. No.14 dated 20.01.1992 which is factually incorrect. The renewal of planning permission granted by the local authority was on 07.03.1992 and the certificates produced by the petitioner from various authorities also disclose that the petitioner commenced the business from 07.06.1993, hence, this Court is of the

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considered view that the first respondent, without considering the above said facts has passed the impugned order, hence, the same is liable to be set aside and accordingly it is set aside. The writ petition is allowed. No costs.

rsh

Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Secretary
   Government of Tamil Nadu
   Information & Tourism Department
   Fort St. George
   Chennai - 600 009

2. The Commissioner of Tourism
   Tourism Complex
   Wallajah Road
   Chennai - 600 002

+1 cc to Mr.K.V.Sundarajan, Advocate Sr.No.50976.

+1 cc to Government Pleader Sr.No.50902.

KSJ(CO)
dcp/18.8

WP No. 22290 of 2004

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